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## FAX TRANSMISSION

DATE: February 26, 2007

PTO IDENTIFIER: Application Number 10/010,942-Conf. #5594  
Patent Number

Inventor: Gurq BASI et al.

MESSAGE TO: US Patent and Trademark Office

FAX NUMBER: (571) 273-8300

FROM: LAHIVE & COCKFIELD, LLP  
Amy E Mandragouras, Esq.

PHONE: (617) 227-7400

Attorney Dkt. #: ELN-002

PAGES (Including Cover Sheet): 114

CONTENTS: Fee Transmittal (1 page)  
Transmittal (1 page)  
Petition for Reconsideration Under 37 CFR 1.705(b) and/or 1.705(c)  
Exhibits 1-17  
Certificate of Transmission (1 page)

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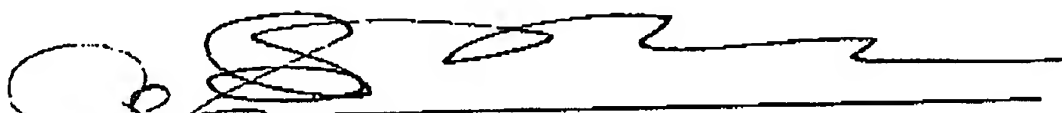
Application No (if known) 10/010,942

Attorney Docket No.: ELN-002

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on February 26, 2007  
Date

  
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Signature  
Amy E. Mandragouras, Esq.  
\_\_\_\_\_  
Typed or printed name of person signing Certificate  
36,207 (617) 227-7400  
\_\_\_\_\_  
Registration Number, if applicable Telephone Number

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Fee Transmittal (1 page)  
Transmittal (1 page)  
Petition for Reconsideration Under 37 CFR 1.705(b) and/or 1.705(c)  
Exhibits 1-17

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PTO/SB/21 (09-08)

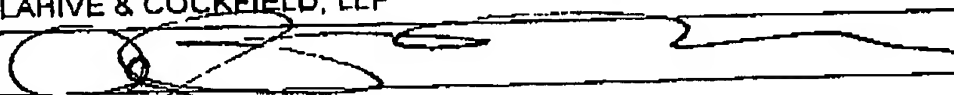
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|  |                        |                        |
|--|------------------------|------------------------|
| <b>TRANSMITTAL<br/>FORM</b><br><br><small>(to be used for all correspondence after initial filing)</small> | Application Number     | 10/010,942-Conf. #5594 |
|  | Filing Date            | December 6, 2001       |
|  | First Named Inventor   | Guriq BASI             |
|  | Art Unit               | 1849                   |
|  | Examiner Name          | K. A. Ballard          |
|  | Attorney Docket Number | ELN-002                |
| Total Number of Pages in This Submission   |                        |                        |

| ENCLOSURES (Check all that apply)  |  |   |
|--|--|---|
| <input checked="" type="checkbox"/> Fee Transmittal Form<br><input type="checkbox"/> Fee Attached<br><input type="checkbox"/> Amendment/Reply<br><input type="checkbox"/> After Final<br><input type="checkbox"/> Affidavits/declaration(s)<br><input type="checkbox"/> Extension of Time Request<br><input type="checkbox"/> Express Abandonment Request<br><input type="checkbox"/> Information Disclosure Statement<br><input type="checkbox"/> Certified Copy of Priority Document(s)<br><input type="checkbox"/> Reply to Missing Parts/Incomplete Application<br><input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53 | <input type="checkbox"/> Drawing(s)<br><input type="checkbox"/> Licensing-related Papers<br><input type="checkbox"/> Petition<br><input type="checkbox"/> Petition to Convert to a Provisional Application<br><input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address<br><input type="checkbox"/> Terminal Disclaimer<br><input type="checkbox"/> Request for Refund<br><input type="checkbox"/> CD, Number of CD(s) _____<br><input type="checkbox"/> Landscape Table on CD | <input type="checkbox"/> After Allowance Communication to TC<br><input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences<br><input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)<br><input type="checkbox"/> Proprietary Information<br><input type="checkbox"/> Status Letter<br><input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):<br>Petition for Reconsideration Under 37 CFR 1.705(b) and/or 1.705(c), Exhibits 1-17;<br>Certificate of Transmission under 37 CFR 1.8 |
| <div style="border: 1px solid black; padding: 2px; width: fit-content;">Remarks</div>  |  |   |

| SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT |  |          |        |
|--|--|----------|--------|
| Firm Name                                  | LAHIVE & COCKFIELD, LLP  |          |        |
| Signature                                  |  |          |        |
| Printed name                               | Amy E. Mandragouras, Esq.  |          |        |
| Date                                       | February 26, 2007  | Reg. No. | 36,207 |

|  |  |
|--|--|
| I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being transmitted by facsimile to the Patent and Trademark Office, facsimile no. (571) 273-8300 at Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date shown below. |  |
| Dated: February 26, 2007   | Signature  (Amy E. Mandragouras, Esq.) |

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PTO/SB/17 (07-06)

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|   |  |  |  |
|---|--|--|--|
| <b>Effective on 12/08/2004</b><br><b>Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4878)</b><br><b>FEE TRANSMITTAL</b><br><b>For FY 2006</b> |  | <b>Complete if Known</b><br>Application Number 10/010,942-Conf #5584<br>Filing Date December 6, 2001<br>First Named Inventor Gurq BASI<br>Examiner Name K. A. Ballard<br>Art Unit 1649<br>Attorney Docket No ELN-002 |  |
| <input type="checkbox"/> Applicant claims small entity status See 37 CFR 1.27   |  |  |  |
| <b>TOTAL AMOUNT OF PAYMENT</b> (\$) 0.00  |  |  |  |

**METHOD OF PAYMENT (check all that apply)**

|   |                                      |   |                               |   |
|---|--------------------------------------|---|-------------------------------|---|
| <input type="checkbox"/> Check  | <input type="checkbox"/> Credit Card | <input type="checkbox"/> Money Order  | <input type="checkbox"/> None | <input type="checkbox"/> Other (please identify): |
| <input checked="" type="checkbox"/> Deposit Account Deposit Account Number 12-0080 Deposit Account Name Lahive & Cockfield, LLP |                                      |   |                               |   |
| For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)                          |                                      |   |                               |   |
| <input checked="" type="checkbox"/> Charge fee(s) indicated below   |                                      | <input type="checkbox"/> Charge fee(s) indicated below, except for the filing fee |                               |   |
| <input checked="" type="checkbox"/> Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17          |                                      | <input checked="" type="checkbox"/> Credit any overpayments                       |                               |   |

**FEE CALCULATION****1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

| Application Type | FILING FEES |                       | SEARCH FEES |                       | EXAMINATION FEES |                       | Fees Paid (\$) |
|------------------|-------------|-----------------------|-------------|-----------------------|------------------|-----------------------|----------------|
|                  | Fee (\$)    | Small Entity Fee (\$) | Fee (\$)    | Small Entity Fee (\$) | Fee (\$)         | Small Entity Fee (\$) |                |
| Utility          | 300         | 150                   | 500         | 250                   | 200              | 100                   |                |
| Design           | 200         | 100                   | 100         | 50                    | 130              | 65                    |                |
| Plant            | 200         | 100                   | 300         | 150                   | 160              | 80                    |                |
| Reissue          | 300         | 150                   | 500         | 250                   | 600              | 300                   |                |
| Provisional      | 200         | 100                   | 0           | 0                     | 0                | 0                     |                |

**2. EXCESS CLAIM FEES**

| Fee Description                                    | Fee (\$) | Small Entity Fee (\$) |
|--|----------|-----------------------|
| Each claim over 20 (including Reissues)            | 30       | 25                    |
| Each independent claim over 3 (including Reissues) | 200      | 100                   |
| Multiple dependent claims                          | 360      | 180                   |

|  |                     |                 |                      |                                  |                 |                      |
|--|---------------------|-----------------|----------------------|----------------------------------|-----------------|----------------------|
| <b>Total Claims</b>  | <b>Extra Claims</b> | <b>Fee (\$)</b> | <b>Fee Paid (\$)</b> | <b>Multiple Dependent Claims</b> | <b>Fee (\$)</b> | <b>Fee Paid (\$)</b> |
| - 20 =   | x                   | =               |                      |                                  |                 |                      |
| HP = highest number of total claims paid for, if greater than 20       |                     |                 |                      |                                  |                 |                      |
| <b>Indep. Claims</b>   | <b>Extra Claims</b> | <b>Fee (\$)</b> | <b>Fee Paid (\$)</b> |                                  |                 |                      |
| - 3 =  | x                   | =               |                      |                                  |                 |                      |
| HP = highest number of independent claims paid for, if greater than 3. |                     |                 |                      |                                  |                 |                      |

**3. APPLICATION SIZE FEE**

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s)

| Total Sheets | Extra Sheets | Number of each additional 50 or fraction thereof | Fee (\$) | Fee Paid (\$)         |
|--------------|--------------|--|----------|-----------------------|
| - 100 =      | /50          | (round up to a whole number) x                   |          |                       |
|              |              |  |          | <b>Fees Paid (\$)</b> |

**4. OTHER FEE(S)**

|   |        |
|---|--------|
| Non-English Specification, \$120 fee (no small entity discount) |        |
| Other (e.g., late filing surcharge):                            |        |
| Petition for Reconsideration Under 37 CFR 1.705(b)              | 400.00 |
| Petition for Reconsideration Under 37 CFR 1.705(c)              | 200.00 |

|   |  |                               |                                 |
|---|--|-------------------------------|---------------------------------|
| <b>SUBMITTED BY</b>                         |  | <b>Registration No</b> 36,207 | <b>Telephone</b> (617) 227-7400 |
| Signature                                   |  | <b>(Attorney/Agent)</b>       | <b>Date</b> February 26, 2007   |
| Name (Print Type) Amy E. Mandragouras, Esq. |  |                               |                                 |

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being transmitted by facsimile to the Patent and Trademark Office, facsimile no. (571) 273-8300, at Commission for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date shown below.

Dated February 26, 2007

Signature (Amy E. Mandragouras Esq.)

|  |                                       |
|--|---------------------------------------|
| I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being transmitted by facsimile to the Patent and Trademark Office, Office of Petitions, facsimile no (571) 273-8300 at Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below |                                       |
| Dated February 26, 2007  | Signature <u>(Amy E. Maudragouba)</u> |

Docket No.: ELN-002  
(PATENT)**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**In re Patent Application of:  
Guriq Basi *et al.*

Application No.: 10/010942

Confirmation No.: 5594

Filed: December 6, 2001

Art Unit: 1649

For: HUMANIZED ANTIBODIES THAT  
RECOGNIZE BETA AMYLOID PEPTIDE

Examiner: Ballard, Kimberly A.

MS Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450RECEIVED  
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FEB 26 2007

**REQUEST FOR RECONSIDERATION OF AN APPLICATION FOR  
PATENT TERM ADJUSTMENT PURSUANT TO 37 C.F.R. §1.705(b) AND/OR §1.705(c)**

Dear Sir:

Pursuant to 37 C.F.R. §1.705(b) and/or §1.705(c), Applicants hereby petition for reconsideration of the Application for Patent Term Adjustment filed on August 10, 2006 (hereinafter, "the Application") for the above-referenced patent application. This petition is timely filed within two months of the date of Decision on Application for Patent Term Adjustment dated December 26, 2006 (hereinafter "the Decision"). A copy of the Decision and the Application are filed with this petition as Exhibits 1 and 2.

In the Decision the Petitions Examiner denied Applicants' request for correction of the period of reduction of 107 days for Applicant delay under 37 C.F.R. § 1.704(b) and entry of a new period of Applicant delay of 38 days in connection with Applicants' response to the Notice to File Missing Parts mailed March 1, 2002 (See Decision on Petition, page 1, paragraph 4 to page 2, paragraph 4). The Examiner's denial of the request was on the grounds that Applicants' response to the Notice to File Missing Parts filed by Certificate of Mailing on July 1, 2002 (and date stamped on July 8, 2002) allegedly contained an omission and that the period of 69 days

Serial No. 10/010,942

ELN-002

(beginning July 9, 2002 and ending September 16, 2002 with the filing of a paper correcting the omission) constituted a "failure to engage" pursuant to 37 C.F.R. § 1.704(c)(7).

As indicated by the Notice to Comply with Requirements for Patent Application Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures" mailed August 21, 2002, the alleged omission in this case is that Applicants' response of July 1, 2002 was missing a compliant sequence disk. The Notice indicates that the computer diskette was found to be "damaged and/or unreadable." (see Exhibit 3)

Applicants respectfully request reconsideration of the Application for Patent Term Adjustment on the grounds that Applicants' response did not in fact contain an "omission" on the part of the Applicants and, further, that the period of 69 days is not a "failure to engage" by Applicants. In particular, Applicants respectfully submit that Applicants filed a fully compliant response, including a fully compliant sequence disk on July 1, 2002. The fact that the disk was subsequently found to be damaged by the USPTO was not due to any lack of due care by Applicants, but instead due to the subsequent handling and treatment of the disk by others. Based on information provided by personnel at the USPTO following inspection of the USPTO file copy of the sequence disk filed on July 1, 2002, it is Applicants' understanding that the sequence disk is visibly damaged in a manner consistent with damage caused by irradiation treatment of the disk by the United States Postal Service. As such, Applicants' reply did not have an omission and the period of adjustment set forth in §1.703 should not have been reduced by 69 days (the number of days beginning on the day after the date of the reply having the alleged omission (i.e., July 9, 2002) and ending on the date a reply correcting the omission was filed (i.e., September 16, 2002)). Evidence in support of Applicants request for reconsideration is set forth below.

- I. Applicants' reply did not contain an omission as the sequence diskette of July 1, 2002 was fully compliant.

In support of their request for reconsideration, Applicants submit herewith copies of the following documents as evidence that Applicants' reply of July 1, 2002 did not contain an

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omission and that the sequence disk was compliant and any damage was due to the subsequent handling and treatment by others:

- (1) A true copy of the return postcard dated July 1, 2002, originally filed with the above-referenced sequence disk describing the papers that constituted the filing package and indicating that a "Diskette containing the computer readable form of the Sequence Listing" was enclosed with a Certificate of First Class Mailing and indicating USPTO date-stamp of July 8, 2002 (see Exhibit 4; 1 page);
- (2) A true copy of Applicants' Attorney's file copy of the diskette label affixed to an envelope containing the sequence disk mailed July 1, 2002 and indicating that the sequence disk is dated July 1, 2002 (Exhibit 5);
- (3) A true paper copy of a sequence listing generated from Applicants' Attorney's file copy the sequence diskette mailed on July 1, 2002 (Exhibit 6);
- (4) A Verification Summary Report generated by the USPTO's "Checker" software program confirming that there are no sequence errors in Applicants' Attorney's file copy of the July 1, 2002 sequence listing (Exhibit 7);
- (5) An Affidavit executed by Ms. Micaela Hill affirming that Applicants' Attorney's file copy of the sequence diskette mailed July 1, 2002 is computer-readable and that the paper copy submitted as Exhibit 6 was generated from Applicants' Attorney's file copy of said sequence diskette (Exhibit 8);
- (6) A true paper copy of a sequence listing generated from Assignees' file copy of the sequence diskette mailed on July 1, 2002 (Exhibit 9);
- (7) An Affidavit executed by Ms. Patricia Robinson affirming that Assignees' file copy of the sequence diskette mailed July 1, 2002 is computer-readable and that the paper copy submitted as Exhibit 9 was generated from Assignees' file copy of said sequence diskette (Exhibit 10);
- (8) An Affidavit executed by Debra J. Milasincic, Esq. describing Applicants' Attorney's regular practice in connection with the preparation of sequence listings and sequence diskettes (Exhibit 11);

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(9) A true copy of the return postcard dated September 16, 2002, filed in response to the Notice to Comply and describing the papers that constituted the filing package and indicating that a "Diskette containing the computer readable form of the Sequence Listing" was enclosed with a Certificate of First Class Mailing and indicating USPTO date-stamp of September 20, 2002 (see Exhibit 12);

(10) A true copy of Applicants' Attorney's copy of the sequence diskette and envelope filed September 16, 2002 and indicating that the sequence disk is dated September 16, 2002 (Exhibit 13);

(11) A true paper copy of Applicants' sequence listing filed September 19, 2002 which was found to be compliant (Exhibit 14);

(12) A Statement from Applicants' Attorney confirming that Applicants' Attorney's paper copy of sequence listing filed July 1, 2002 (Exhibit 6) is identical to Applicants' Attorney's paper of the sequence listing filed September 19, 2002 (Exhibit 15).

Therefore, the fact that the sequence disks mailed July 1, 2002 and September 19, 2002 are identical and that the September 19, 2002 diskette was found to be compliant, is evidence that Applicants' diskette mailed July 1, 2002 was also compliant and that Applicants' Attorney used due care. Accordingly, Applicants respectfully submit that Applicants' reply of July 1, 2002 did not contain an omission in that the sequence disk mailed July 1, 2002 was fully compliant, but subsequently damaged by the handling and treatment of others.

II. The sequence disk filed July 1, 2002 was damaged by the handling and treatment by the United States Postal Service.

Evidence in support of Applicants' assertion that the sequence disk of July 1, 2002 was subsequently damaged by treatment of the disk by others following deposit by Applicants can be found by inspection of the USPTO's file copy of the sequence disk filed July 1, 2002. At Applicants' request, Mr. Christopher Lowe, USPTO Quality Assurance Specialist for Technology Center 1600 conducted a visual inspection of the file. Following visual inspection of the sequence disk mailed July 1, 2002, Mr. Lowe indicated to Applicants' Attorneys that the



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disk was "warped" and had "a quarter inch bow in it." It is Applicants' Attorney's understanding that this type of damage is consistent with the irradiation of mail by the United States Postal Service in response to the threat of anthrax poisoning in the Washington D.C. area during the months following the September 11, 2001 terrorist attacks. Sequence disks and other mail submitted to the USPTO in late 2001- mid 2002 were often "damaged" as a result of anthrax irradiation procedures conducted in Lima, Ohio for all mail mailed to the Washington D.C. zip code (20231) of the USPTO (see OG Notice dated January 15, 2002 (Exhibit 16) and Letter dated January 16, 2002 from Commissioner Nicholas P. Godici (Exhibit 17)). Indeed, Applicants' sequence disk was mailed to the 20231 zip code.

As indicated in the OG Notice of January 15, 2002 (Exhibit 16), the USPTO has previously considered mail delays necessitated by the anthrax decontamination process and their effect on Patent Term Adjustment (see Pages 6-8 of Exhibit 16). Where a reply to an Office Action or Notice was mailed on or after October 13, 2001 and no later than December 1, 2001, and where an applicant subsequently received a reduction in Patent Term Adjustment pursuant to 37 C.F.R. §1.704(b) for a delayed receipt of the reply by the USPTO, the USPTO later recognized the mailing date of the reply as a "sufficient showing" that, in spite of all due care, the applicant was unable to reply to the Office Action or Notice within three months of the date of mailing. In these situations, the USPTO saw fit to reinstate applicant's Patent Term Adjustment for any period of delay that exceeded three business days.

Applicants submit that a set of circumstances has occurred in the instant case which are similar to those set forth in Exhibit 16. Here, the evidence indicates that Applicant filed a compliant response including a compliant sequence disk, but that the sequence disk was later damaged by the treatment of others. Given these circumstances, Applicants respectfully submit that they should not be penalized for the 69 day period during which the USPTO mailed a Notice to Comply and Applicants filed a second compliant sequence disk. Applicants submit that they engaged in reasonable efforts to conclude processing of the application by filing a compliant sequence disk on July 1, 2002 which was later rendered defective by circumstances beyond their control. In the alternative, Applicants request reconsideration of the Application for Patent Term Adjustment for either of the following: (i) reinstatement of the 69 day period of adjustment pursuant to 37 C.F.R. §1.705(c) on the grounds that the evidence submitted herewith provides a sufficient showing that, in spite of all due care, the Applicant was unable to respond

Serial No. 10/010,942

ELN-002

to the Notice to File Missing Parts on July 1, 2002 due to unforeseeable circumstances; or (ii) suspension or waiver of 37 C.F.R. § 1.704(c)(7) with respect to the 69 day period in view of these circumstances in accordance with 37 C.F.R. §1.183. In any event, Applicants request correction of the period of reduction of 107 days and entry of a new delay period of 38 days as originally requested.

It is Applicants' Attorney's understanding that the filing of the instant Petition is also not a "failure to engage" by Applicants. This understanding is based on a discussion between Applicants' Agent and the Petitions Examiner in which the Examiner informed Applicants' Agent that the issue of whether or not the sequence disk filed July 1, 2002 was compliant is a valid petitionable issue and not a "frivolous" one. It is Applicant's Attorneys' further understanding that the instant petition is effectively part of the original Application for Patent Term Adjustment and is therefore subject to the "safe harbour" provisions of 37 C.F.R. § 1.704(e). Nevertheless, should the USPTO attribute any period of Applicant Delay due to the filing of the instant petition, it is Applicants' understanding that a Certificate of Correction will be issued by the Petitions Examiner to remove this period as Applicant Delay.

Please charge the appropriate fees set forth in 37 C.F.R. §1.705(b) and 37 C.F.R. §1.705(c) to Account No.: 12-0080. However, if any additional fees are determined to be due, the Commissioner is authorized to withdraw such fees from Account No.: 12-0080.

Dated: February 26, 2007

Respectfully submitted,

By 

Amy E. Mandragouras  
Registration No.: 36,207  
LAHIVE & COCKFIELD, LLP  
28 State Street  
Boston, Massachusetts 02109  
(617) 227-7400  
(617) 742-4214 (Fax)  
Attorney/Agent For Applicant



## UNITED STATES PATENT AND TRADEMARK OFFICE

EXHIBIT 1

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
P.O. BOX 1430  
ALEXANDRIA, VA 22313-1430  
www.uspto.gov

Paper No.

LAHIVE & COCKFIELD, LLP  
ONE POST OFFICE SQUARE  
BOSTON MA 02109-2127

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FEB 26 2007

DEC 26 2006

OFFICE OF PETITIONS

In re Application of :  
Basi et al. : DECISION ON APPLICATION  
Application No. 10/010,942 : FOR  
Filed: December 6, 2001 : PATENT TERM ADJUSTMENT  
Attorney Docket No. ELN-002 :

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT INCLUDING REQUEST FOR RECONSIDERATION UNDER 37 CFR §1.705(b)," filed August 10, 2006. Applicants request that the determination of patent term adjustment be corrected from zero (0) days to at least five hundred eight (508) days.

The application for patent term adjustment is GRANTED to the extent indicated herein.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is ZERO (0) days, including an additional period of reduction of 12 days for applicant delay. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On May 11, 2006, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 0 days. The instant application for patent term adjustment was timely filed<sup>1</sup>. Applicants dispute the reduction of 107 days associated with their filing of a response on September 16, 2002 to the Notice to File Missing Parts of

<sup>1</sup> PALM records indicate that the Issue Fee was received on August 11, 2006.

Application No. 10/010,942

Page 2

Application mailed March 1, 2002. Applicants contend that their response was filed on July 9, 2002, and thus, the period of reduction pursuant to 1.704(b) is 38 days.

Applicants disclose that a period of reduction of 12 days should be entered for their filing of an Information Disclosure Statement on March 12, 2006. This period has been entered.

37 C.F.R. §1.704(c)(7) provides that a period of reduction is entered for:

Submission of a reply having an omission (§1.135(c)), in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the reply having an omission was filed and ending on the date that the reply or other paper correcting the omission was filed.

In this instance, a response was filed on July 9, 2002, three months and 38 days after the mailing of the Notice. Further, this response as indicated by the Notice to Comply mailed August 21, 2002, had an omission. On September 16, 2002, 69 days later, applicant filed the paper correcting the omission. Accordingly, pursuant to 37 CFR §§ 1.704(b) and 1.704(c)(7), a total period of 107 days was entered for applicant delay associated with these two failures to engage.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the notice of allowance is ZERO (0) days.

Receipt of the \$200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fees are required.

The Office of Patent Publication has been advised of this decision. The application is thereby forwarded to the Office of Patent Publication for issuance of the patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

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Page 3

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.



Nancy Johnson  
Senior Petitions Attorney  
Office of Petitions

Enclosure: Copy of Revised PAIR Screen

Day : Thursday  
Date: 12/21/2006

Time: 07:33:59

## PALM INTRANET

| PTA Calculations for Application: 10/010942 |  |            |                         |  |     |
|---|--|------------|-------------------------|--|-----|
| Application Filing Date:                    |  | 12/06/2001 | PTO Delay (PTO):        |  | 244 |
| Issue Date of Patent:                       |  |            | Three Years:            |  | 0   |
| Pre-Issue Petitions:                        |  | 0          | Applicant Delay (APPL): |  | 392 |
| Post-Issue Petitions:                       |  | 0          | Total PTA (days):       |  | 0   |
| PTO Delay Adjustment:                       |  | -12        |                         |  |     |

| File Contents History |            |   |     |      |       |
|-----------------------|------------|---|-----|------|-------|
| Number                | Date       | Contents Description                            | PTO | APPL | START |
| 110                   | 12/21/2006 | ADJUSTMENT OF PTA CALCULATION BY PTO            |     | 69   |       |
| 109                   | 12/21/2006 | ADJUSTMENT OF PTA CALCULATION BY PTO            |     | 38   |       |
| 108                   | 12/21/2006 | ADJUSTMENT OF PTA CALCULATION BY PTO            | 73  |      |       |
| 107                   | 12/21/2006 | ADJUSTMENT OF PTA CALCULATION BY PTO            | 107 |      |       |
| 106                   | 12/21/2006 | ADJUSTMENT OF PTA CALCULATION BY PTO            |     | 73   |       |
| 105                   | 12/21/2006 | ADJUSTMENT OF PTA CALCULATION BY PTO            |     | 12   |       |
| 85                    | 05/11/2006 | MAIL NOTICE OF ALLOWANCE                        |     |      |       |
| 84                    | 05/11/2006 | MAIL FORMAL DRAWINGS REQUIRED                   |     |      |       |
| 83                    | 05/11/2006 | MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)    |     |      |       |
| 82                    | 05/10/2006 | ISSUE REVISION COMPLETED                        |     |      |       |
| 81                    | 05/10/2006 | FORMAL DRAWINGS REQUIRED                        |     |      |       |
| 80                    | 05/10/2006 | NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED |     |      |       |
| 79                    | 05/10/2006 | CASE DOCKETED TO EXAMINER IN GAU                |     |      |       |
| 78                    | 05/10/2006 | NOTICE OF ALLOWABILITY                          |     |      |       |
| 77                    | 04/24/2006 | EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)  |     |      |       |
| 76                    | 05/01/2006 | MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)    |     |      |       |
| 75                    | 04/11/2006 | EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)  |     |      |       |
| 74                    | 03/15/2006 | INFORMATION DISCLOSURE STATEMENT CONSIDERED     |     |      |       |
| 73                    | 03/03/2006 | INFORMATION DISCLOSURE STATEMENT CONSIDERED     |     |      |       |
| 72                    | 12/22/2005 | INFORMATION DISCLOSURE STATEMENT CONSIDERED     |     |      |       |

|    |            |  |    |    |    |
|----|------------|--|----|----|----|
| 71 | 03/15/2006 | REFERENCE CAPTURE ON IDS                       |    |    |    |
| 70 | 03/15/2006 | INFORMATION DISCLOSURE STATEMENT (IDS) FILED   |    |    |    |
| 69 | 03/03/2006 | NEW OR ADDITIONAL DRAWING FILED                |    |    |    |
| 68 | 03/13/2006 | DATE FORWARDED TO EXAMINER                     |    |    |    |
| 67 | 03/03/2006 | RESPONSE AFTER NON-FINAL ACTION                |    | 59 | 59 |
| 66 | 03/03/2006 | REQUEST FOR EXTENSION OF TIME - GRANTED        |    |    |    |
| 65 | 03/03/2006 | REFERENCE CAPTURE ON IDS                       |    |    |    |
| 64 | 03/03/2006 | INFORMATION DISCLOSURE STATEMENT (IDS) FILED   |    |    |    |
| 63 | 02/22/2006 | MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)   |    |    |    |
| 62 | 02/16/2006 | EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413) |    |    |    |
| 61 | 12/22/2005 | REFERENCE CAPTURE ON IDS                       |    |    |    |
| 60 | 12/22/2005 | INFORMATION DISCLOSURE STATEMENT (IDS) FILED   |    |    |    |
| 59 | 10/03/2005 | MAIL NON-FINAL REJECTION                       | 14 |    | 47 |
| 58 | 09/29/2005 | NON-FINAL REJECTION                            |    |    |    |
| 57 | 08/24/2005 | CASE DOCKETED TO EXAMINER IN GAU               |    |    |    |
| 56 | 06/28/2005 | CASE DOCKETED TO EXAMINER IN GAU               |    |    |    |
| 55 | 05/24/2005 | INFORMATION DISCLOSURE STATEMENT (IDS) FILED   |    | 5  | 47 |
| 54 | 06/02/2005 | IFW TSS PROCESSING BY TECH CENTER COMPLETE     |    |    |    |
| 53 | 06/02/2005 | CASE DOCKETED TO EXAMINER IN GAU               |    |    |    |
| 52 | 11/29/2004 | REFERENCE CAPTURE ON IDS                       |    |    |    |
| 51 | 11/29/2004 | INFORMATION DISCLOSURE STATEMENT (IDS) FILED   |    |    |    |
| 50 | 05/24/2005 | REFERENCE CAPTURE ON IDS                       |    |    |    |
| 48 | 06/01/2005 | DATE FORWARDED TO EXAMINER                     |    |    |    |
| 47 | 05/19/2005 | RESPONSE AFTER NON-FINAL ACTION                |    | 30 | 44 |
| 46 | 05/19/2005 | REQUEST FOR EXTENSION OF TIME - GRANTED        |    |    |    |
| 45 | 05/25/2005 | CASE DOCKETED TO EXAMINER IN GAU               |    |    |    |
| 44 | 01/19/2005 | MAIL NON-FINAL REJECTION                       |    |    |    |
| 43 | 01/19/2005 | NON-FINAL REJECTION                            |    |    |    |
| 42 | 12/16/2004 | INFORMATION DISCLOSURE STATEMENT (IDS) FILED   |    | 20 | 38 |

|    |            |  |     |     |    |
|----|------------|--|-----|-----|----|
| 41 | 12/20/2004 | DATE FORWARDED TO EXAMINER   |     |     |    |
| 40 | 12/14/2004 | SUPPLEMENTAL RESPONSE  |     |     |    |
| 39 | 12/07/2004 | DATE FORWARDED TO EXAMINER   |     |     |    |
| 38 | 11/26/2004 | RESPONSE AFTER NON-FINAL ACTION  |     | 92  | 35 |
| 37 | 11/26/2004 | REQUEST FOR EXTENSION OF TIME - GRANTED  |     |     |    |
| 36 | 11/26/2004 | WORKFLOW INCOMING AMENDMENT IFW  |     |     |    |
| 35 | 05/26/2004 | MAIL NON-FINAL REJECTION   |     |     |    |
| 34 | 05/25/2004 | NON-FINAL REJECTION  |     |     |    |
| 33 | 03/18/2004 | DATE FORWARDED TO EXAMINER   |     |     |    |
| 32 | 03/12/2004 | RESPONSE TO ELECTION / RESTRICTION FILED   |     | 79  | 26 |
| 29 | 03/12/2004 | REQUEST FOR EXTENSION OF TIME - GRANTED  |     |     |    |
| 28 | 12/19/2003 | CORRESPONDENCE ADDRESS CHANGE  |     |     |    |
| 27 | 09/20/2003 | PRELIMINARY AMENDMENT  |     |     |    |
| 26 | 09/24/2003 | MAIL RESTRICTION REQUIREMENT   | 230 |     | -1 |
| 25 | 09/24/2003 | REQUIREMENT FOR RESTRICTION / ELECTION   |     |     |    |
| 24 | 09/17/2003 | CASE DOCKETED TO EXAMINER IN GAU   |     |     |    |
| 23 | 10/03/2002 | INFORMATION DISCLOSURE STATEMENT (IDS) FILED   |     |     |    |
| 22 | 07/09/2002 | PRELIMINARY AMENDMENT  |     |     |    |
| 21 | 05/27/2003 | CASE DOCKETED TO EXAMINER IN GAU   |     |     |    |
| 20 | 04/21/2003 | CASE DOCKETED TO EXAMINER IN GAU   |     |     |    |
| 19 | 10/11/2002 | APPLICATION DISPATCHED FROM OIPE   |     |     |    |
| 18 | 10/10/2002 | APPLICATION IS NOW COMPLETE  |     |     |    |
| 17 | 09/16/2002 | ADDITIONAL APPLICATION FILING FEES   |     | 107 | 8  |
| 16 | 09/16/2002 | CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT  |     |     |    |
| 15 | 10/07/2002 | CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE  |     |     |    |
| 14 | 08/25/2002 | RECEIPT OF ALL ACKNOWLEDGEMENT LETTERS   |     |     |    |
| 13 | 08/21/2002 | SEQUENCE ERRORS  |     |     |    |
| 12 | 07/01/2002 | PAYMENT OF ADDITIONAL FILING FEE/PREEXAM   |     |     |    |
| 11 | 07/01/2002 | CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT  |     |     |    |
| 10 | 07/01/2002 | A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC |     |     |    |



|   |            |   |  |  |  |
|---|------------|---|--|--|--|
| 9 | 07/30/2002 | CRF DOES NOT MATCH APPLICATION SPECIFICATION -- APPLICANT MUST CORRECT            |  |  |  |
| 8 | 03/01/2002 | NOTICE MAILED--APPLICATION INCOMPLETE-- FILING DATE ASSIGNED                      |  |  |  |
| 6 | 01/15/2002 | REFERRED BY L&R FOR THIRD-LEVEL SECURITY REVIEW. AGENCY REFERRAL LETTER GENERATED |  |  |  |
| 5 | 01/10/2002 | IFW SCAN & PACR AUTO SECURITY REVIEW  |  |  |  |
| 4 | 01/04/2002 | CRF IS FLAWED TECHNICALLY / NOT ENTERED INTO DATABASE                             |  |  |  |
| 3 | 12/19/2001 | IFW SCAN & PACR AUTO SECURITY REVIEW  |  |  |  |
| 2 | 12/06/2001 | CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT                               |  |  |  |
| 1 | 12/06/2001 | INITIAL EXAM TEAM NN  |  |  |  |

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**EXPLANATION OF PTA CALCULATION****EXPLANATION OF PTE CALCULATION**

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EXHIBIT 2

EXPRESS MAIL LABEL NO.: EV 465008962US August 10, 2006

Docket No.: ELN-002  
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:  
Guriq Basi *et al.*

Application No.: 10/010942

Confirmation No.: 5594

Filed: December 6, 2001

Art Unit: 1649

For: HUMANIZED ANTIBODIES THAT  
RECOGNIZE BETA AMYLOID PEPTIDE

Examiner: Ballard, Kimberly A.

MS Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

STATEMENT UNDER 37 CFR § 1.702(b)(2)

Dear Sir:

1. This statement is respectfully submitted in support of the "Application for Patent Term Adjustment Including Request for Reconsideration Under 37 CFR §1.705(b)" for the above-referenced application. In view of the following, it is respectfully requested that Applicants be granted a minimum patent term adjustment of 508 days, with an additional term to be added based on the number of days following payment of the issue fee on August 11, 2006 to the date of issuance of a patent for the above-referenced application.

2. The patent term adjustment on the Determination of Patent Term Adjustment Under 35 U.S.C. §154(b) ("PTAS Sheet") that was attached to the Notice of Allowance is 0 days (a copy of the PTAS Sheet is submitted herewith as Exhibit A). This determination of 0 days is in error in that pursuant to 35 U.S.C. §154(b) the Office failed to take certain action within the time frame specified in 37 CFR §1.702(a) and failed to issue a patent within three years of the actual filing date of the above-referenced application in accordance with 37 CFR §1.702(b).

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Pursuant to 37 CFR §1.703(a), Applicants are entitled to a period of patent term adjustment due to the failure by the Office to mail an action under 35 U.S.C. §132 not later than 14 months after the actual filing date (*i.e.*, by February 6, 2003) (hereinafter "14 Month Delay"). As the Office failed to mail an action under 35 U.S.C. §132 until September 24, 2003, Applicants are entitled to a period of patent term adjustment beginning on the day after the date that is 14 months after the date on which the above-referenced application was filed under 35 U.S.C. §111(a), *i.e.*, February 7, 2003, and ending on the date of mailing of an action under 35 U.S.C. §132, *i.e.*, September 24, 2003. Accordingly, the period of patent term adjustment due to the 14 Month Delay by the Office is 230 days, which is in agreement with the period calculated by the Office on the PTAS Sheet (Exhibit A, line 25).

In addition to the patent term adjustment due to the 14 Month Delay, pursuant to 37 CFR §1.703(b) Applicants are entitled to a period of patent term adjustment due to examination delay from the number of days in the period beginning on the day after the date that is three years after the date on which the above-referenced application was filed under 35 U.S.C. §111(a), *i.e.*, December 7, 2004, and ending on the date a patent is issued, (hereinafter "Three Years Delay"). As the issue date has yet to be determined, Applicants have calculated a minimum period of Three Years Delay of 613 days, based on a hypothetical issue date of August 11, 2006, the projected date of payment of the issue fee.

As set forth in 37 CFR §1.703(f), Applicants are entitled to a period of patent term adjustment equal to the period of examination delays based on the grounds set forth in 37 CFR §1.702 reduced by the period of time equal to the period of time during which Applicants failed to engage in reasonable efforts to conclude prosecution pursuant to 37 CFR §1.704 (hereinafter "Applicant Delay"). With respect to the above-referenced application, the total period of examination delays is the sum of the period of 14 Month Delay (230 days) and the minimum period of Three Years Delay (613 days), or 843 days, to the extent these periods of delay are not overlapping. As the period of 14 Month Delay ended on November 24, 2003, prior to the first day of the period of Three Years Delay, *i.e.*, December 7, 2004, Applicants submit that these periods are not overlapping. To calculate the period of patent term adjustment, the total period

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of examination delay is reduced by the period of Applicant Delay, which Applicants have calculated herein as a period of 335 days (not 392 days as set forth in the PTAS Sheet (Exhibit A)).

Accordingly, Applicants submit that the correct patent term adjustment for the above-referenced application is at least 508 days, which is the difference between the total period of examination delay (843 days) and the period of Applicant Delay (335 days). Applicants further submit that the term of 508 days should be extended by an additional term equal to the number of days following payment of the issue fee on August 11, 2006 to the date of issuance of a patent for the above-referenced application in accordance with 37 CFR §1.703(b). As such, the correct patent term adjustment upon issuance of a patent is expected to be the sum of 508 days (as calculated herein) and the number of days from August 12, 2006 to issuance of a patent.

3. The factual bases for the above adjustment are set forth as follows:

A Examination Delays Pursuant to 37 CFR §1.702 and §1.703

Pursuant to 37 CFR §1.703(f), the period of adjustment of the term of the patent under §1.702 is the sum of the periods of examination delay calculated under subparagraphs (a)-(e), to the extent that such periods are not overlapping, less the sum of the periods calculated under §1.704 (the period of Applicant Delay). In the above-referenced application, Applicants are entitled to a period of examination delay equal to the sum of the periods of delay under §1.703(a) and (b) for the reasons set forth below.

(i) "14 Month Delay" Pursuant to §1.703(a)(1)

In accordance 37 CFR §1.703(a)(1), Applicants are entitled to a period of patent term adjustment due to the failure by the Office to mail an action under 35 U.S.C. §132 not later than 14 months after the actual filing date (i.e., by February 6, 2003). As shown in the PTAS Sheet (Exhibit A, line 25), the Office failed to mail an action under 35 U.S.C. §132 (a Restriction

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Requirement) until September 24, 2003. As such, Applicants are entitled to a period of patent term adjustment beginning February 7, 2003 and ending on September 24, 2003, the date of mailing of the Restriction Requirement by the Office. Accordingly, the period of patent term adjustment due to the 14 Month Delay by the Office is 230 days, as shown on line 25 of the PTAS Sheet (Exhibit A, line 25).

(ii) "Three Years Delay" Pursuant to 37 CFR §1.703(b)

It is anticipated that the Office will not comply with the requirement of 35 U.S.C. §154(b) and 37 CFR §1.702(b), which requires issuance of a patent within 3 years after the date on which the application was filed under 35 U.S.C. §111(a). As indicated in the Notice of Allowance, a patent is projected to issue on November 28, 2006, but may issue earlier or later depending on the circumstances of publication. However, even assuming *arguendo* that a patent is issued on the same day as the projected date of payment of the issue fee (*i.e.*, August 11, 2006), said issue date would be 3 years and 613 days after the date on which the above-referenced application was filed under 35 U.S.C. §111(a). As none of the exclusionary periods set forth in 37 CFR §1.702(b) apply to the instant application and in accordance with 37 CFR §1.703, a minimum period of examination delay is calculated to be at least 613 days, based on the hypothetical issue date of August 11, 2006. This minimum period of examination delay is to be extended by an additional term equal to the number of days following payment of the issue fee on August 11, 2006 to the date of issuance of a patent. Accordingly, the entire period of Three Years Delay is the sum of the minimum period of examination delay of 613 days and the number of days from August 12, 2006 to the day of issuance of the patent.

(iii) Total Examination Delay Pursuant to 37 CFR §1.703(f)

As set forth in 37 CFR §1.703(f), the period of examination delay based on the grounds set forth in 37 CFR §1.702 is the sum of the period of 14 Month Delay (230 days) and the minimum period of Three Years Delay (613 days), or 843 days, to the extent these periods of delay are not overlapping. As the period of 14 Month Delay ended on November 24, 2003, prior to the first day of the period of Three Years Delay, *i.e.*, December 7, 2004, Applicants submit that these periods are not overlapping.

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**B. "Applicant Delay" Pursuant to 37 CFR §1.704**

Pursuant to 37 CFR §1.704 the period of adjustment of the term of the patent due to examination delay is reduced by the period of Applicant Delay. As indicated on the PTAS Sheet (Exhibit A), the Office has calculated a period of Applicant Delay of 392 days. Applicants respectfully submit that the correct period of Applicant Delay is 335 days and seek correction based on the following remarks. A PTAS Sheet showing corrections by Applicants is submitted herewith as Exhibit C. A copy of the "Image File Wrapper Record" and "Transaction History" from Applicants' Private PAIR are submitted herewith as Exhibits B and F.

**(i) Applicant Delay for Responding to a Notice to File Missing Parts of March 1, 2002**

Applicants request correction of the initial period of Applicant Delay of 107 days (line 16 of Exhibit A) from the date of mailing of a Notice to File Missing Parts of the Application on March 1, 2002 (line 7 of Exhibit A) to September 16, 2002 (line 16 of Exhibit A), the date on which Applicants are alleged to have responded. Applicants submit that the correct period of Applicant Delay is 38 days, which is the number of days in excess of 3 months from the date of the Notice to File Missing Parts (i.e., June 1, 2002) to the date on which a complete response was filed by the Applicants (i.e., July 9, 2002). As evidenced by the enclosed copy of a postcard receipt (submitted herewith as Exhibit D), Applicants filed a complete response to the Notice to File Missing Parts, including a computer-readable sequence disk, via first class mail on July 1, 2002. The date-in stamp on the postcard receipt indicates that these documents and sequence disk were received by the Office on July 9, 2002. Copies of the Notice to File Missing Parts from March 1, 2002 as well as Applicants' response thereto from the Image File Wrapper Record are submitted herewith as Exhibit E. Additional evidence of receipt of Applicants' complete response on July 9, 2002 is shown on the Image File Wrapper Record (Exhibit B) from this date indicating "Applicant Response to Pre-Exam Formalities Notice", "Oath or Declaration Filed" and "CFR Sequence Listing Filed," among other entries. According to 37 CFR §1.704 (b), the period of Applicant Delay begins on the day that is 3 months after the date of the Notice to Comply (i.e., June 2, 2002) and ends on the date the reply was filed by Applicants (i.e., July 9, 2002) for a total of 38 days. For the reasons set forth in subsection B (ii) below, Applicants

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submit that no other Applicant Delays accrued during the period from March 1, 2002 to September 16, 2002. As such, Applicants request correction of the initial period of Applicant Delay of 107 days (line 16 of Exhibit A) to 38 days (line 12 of Exhibit C).

(ii) Applicant Delay for Responding to a Notice to Comply with Sequence Listing of August 21, 2002

Applicants respectfully submit that the Office has improperly calculated the period beginning August 22, 2002 (the day following the mail date of a "Preexam Formalities Notice"

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